

In the Matter of Merchant Mariner's Document No. Z-486601 and all
other Seaman Documents
Issued to: SAMUEL SMITH

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1484

SAMUEL SMITH

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 31 August 1964, an Examiner of the United States Coast Guard at New Orleans, Louisiana suspended Appellant's seaman documents for two months outright plus three months on twelve months' probation upon finding him guilty of misconduct. The three specifications found proved allege that while serving as an able seaman on board the United States SS SAN JOSE under authority of the document above described, on or about 24 or 25 August 1964, Appellant wrongfully refused to obey a lawful order of the Master, wrongfully had possession of an alcoholic beverage (beer), and wrongfully acted in a disrespectful manner toward the Master.

At the hearing, Appellant was represented by non-professional counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence testimony by the Master and Third Mate.

Although Appellant testified that the alleged offenses were concocted by the Master in order to persecute Appellant, he admitted going ashore contrary to the Master's order and drinking beer on the ship. Appellant stated that he has been going to sea since 1932.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and three specifications had been proved.

FINDINGS OF FACT

On 24 August 1964, Appellant was serving as an able seaman on board the United States SS SAN JOSE and acting under authority of

his document. About 0800 on this date, Appellant was returned to the ship by the local police, at the request of the Master, while the ship was at Cortez, Honduras. The Master ordered Appellant to go to his quarters, to stop drinking, and told him that his shore leave was canceled. Shortly thereafter, Appellant went ashore and did not return to the ship until approximately 1230.

On the afternoon of 24 August, the Master and Third Mate found Appellant drinking beer in a room other than his own. When the Master told Appellant to open the door to his room, he threw the key on the deck, said he would not open the door, and walked away. The Master and Third Mate were looking for a passkey to Appellant's room when Appellant unlocked the door with his key.

Appellant's prior record consists of admonitions in 1951, 1956, 1960 and 1964, and a probationary suspension in 1963. The offenses involved were failures to perform duties, failures to join, absence from vessel, and creating a disturbance.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the order is too severe for the offenses, witnesses are willing to testify in Appellant's behalf, and he has no other livelihood.

OPINION

Possibly Appellant had been lulled into a false sense of security due to the fact that on five prior occasions no outright suspension of his document was ordered. In contention with the present offenses, his admittedly deliberate disobedience and his otherwise disrespectful attitude toward the Master were alone sufficient to justify the order imposed by the Examiner. In The SHAWNEE (D. C. Wisc. 1891), 45 Fed. 769, it was stated:

"The primary and paramount duty if the sailor is implicit obedience to every lawful command. He cannot be permitted to debate the propriety of the Master's orders, and the courts of admiralty will not tolerate any hesitation in prompt and active obedience. It is only the extremity of danger that will justify resistance to even the rash and improper exercise of the master's authority."

With respect to the offense of possession of beer on board the ship, the prohibition in foreign Shipping Articles against "grog" has been interpreted as prohibiting any alcoholic beverage including beer. See Commandant's Appeal Decisions Nos. 1126 and 1282.

When the charges were served and again at the hearing, Appellant was informed of the right to have witnesses subpoenaed in his behalf but he expressed no desire to do so. It is now too late.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 31 August 1964, is AFFIRMED.

W. D. Shields
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 11th day of December, 1964.

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